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Presidential Hubris and War

The Illusion of Victory: America in World War I

THOMAS FLEMING
BASIC BOOKS, 2003
XI + 543 PGS.

Thomas Fleming's outstanding book poses a fundamental problem. Fleming shows that Woodrow Wilson led America into an unnecessary war. Wilson had not the remotest idea of what he wished to accomplish by involvement in World War I, but his ill-considered policies added massive American casualties to the horrendous totals racked up by the European powers. As if this were not enough, Wilson proved totally incompetent at the Paris Peace Conference.

Of Wilson's manifest incompetence, there can be no doubt: Fleming has documented to the hilt a picture of the American president that makes the reader gasp in astonishment. But, if Fleming is right, a question at once arises: How could such a bizarre character as Wilson have managed to assume control of American foreign policy? In ability, Wilson ranked no more than what his great rival Theodore Roosevelt

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called him: "a Byzantine logothete [i.e., accountant or tax official]." How then did Wilson rise to supreme power and maintain a tenacious hold on it?

The answer lies largely in Wilson's skill as an orator. At crucial times, he was able to convince people that he was an idealist who wished to reform sordid politics through moral principles. When examined, his words proved to be frothy and meaningless verbiage; but he again and again succeeded in fooling large numbers of people.

Fleming analyzes in considerable detail Wilson's most famous oration: his speech to Congress on April 2, 1917, calling for a declaration of war against Germany. As Wilson presented matters, the need for war admitted of no doubt. Germany's practice of unrestricted submarine warfare violated America's rights as a neutral power. Despite repeated protests, Germany refused to stop a policy that had killed many Americans.

But in taking up the German challenge, Wilson averred, the United States did not seek any sordid ends. Wilson did not aim at territorial conquest, nor was his quarrel with the German people. He wished rather to defeat autocratic power and promote democracy and self-determination.

I have deliberately presented the substance of Wilson's remarks in nondescript language. Now, let us hear how Wilson himself put the matter: "It is a fearful thing to lead this great peaceful people into war, into the most terrible and disastrous of all wars, civilization itself seeming to hang in the balance. But the right is more precious than peace, and we will fight for the things we have always carried in our hearts—for democracy . . . for the rights and liberties of small nations, for a universal dominion of right by such a concert of free peoples as shall bring peace and safety to all nations and make the world at last free. . . . America is privileged to spend her blood and her might for the principles that gave her birth and happiness and the peace which she has treasured. God helping her, she can do no other" (p. 20).

Wilson's rhetoric today sounds a little stilted and old-fashioned, but it accomplished its goal: a wildly cheering Congress granted in a few days Wilson's wish for a declaration of war. In doing so, they made a disastrous mistake, as Senator Robert LaFollette pointed out in his brilliant but futile challenge to Wilson's flights of fancy.

Britain, from the onset of war in 1914, had imposed a tight blockade on Germany; by preventing food from being imported into the country, the British brought starvation and

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malnutrition to large masses of the German people. As Senator LaFollette pointed out, a food blockade violated international law and struck at America's rights as a neutral power. Even the British sometimes recognized the essential issue: "LaFollette cited an admission by Lord Salisbury, one of England's most prominent statesmen, that food for the civilian population was never contraband—a principle that the English were callously ignoring in their blockade of Germany" (p. 35).

German submarine warfare was a desperate response to the British blockade—a blockade so effective that it threatened to force the Germans out of the war. But Wilson declined except in perfunctory terms to challenge the British. In complete contrast, he held Germany to the strictest accountability.

But perhaps Wilson's distinctly unneutral "neutrality" was justifiable. Was not Germany bent on world domination? If so, was not a victory of Britain and her allies in America's interest? Fleming sees little reason to view the European war as more than a struggle among competing powers. Contrary to Wilson and his Svengali-like adviser, Edward Mandell House, the war was not a struggle by the "democratic" countries, led by the British Empire, to stave off autocratic Germany's bid for world control.

In this connection, Fleming effectively demolishes the myth, propagated by American Ambassador to Turkey Henry Morgenthau, Sr., that Kaiser Wilhelm II chaired a council in July 1914 that determined on war. "Historians examining the evidence in the next decade concluded that Morgenthau was lying" (p. 374).[1]

Latter-day defenders of Wilson will no doubt respond, "Even if revisionist historians have shown that Germany did not deliberately embark on war, the conduct of the war showed that Germany menaced world civilization. What about the Belgian atrocities?"

Fleming maintains that the British began a worldwide propaganda campaign designed to show the Germans to be inhuman monsters. Lord Bryce, a historian and political scientist of great distinction, issued a report that contained riveting claims of gruesome atrocities, but these could not be documented. "The Germans were unprepared for the British propaganda

Fleming sees little reason to view the European war as more than a struggle among competing powers.

[1]Fleming should ideally have included some discussion of the treatment of the war council by Luigi Albertini, *The Origins of the War of 1914* (Oxford University Press, 1952). Sidney Fay was the main historian critical of Morgenthau's account.

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onslaught of 1914. As a newcomer to international power politics—Germany was barely 40 years old in 1914—the country had paid little attention to this time-honored British custom of slandering their enemies" (p. 59).

Our author is by no means an uncritical apologist for the German Kaiser and his military machine. Germany pursued a harsh policy of reprisals against Belgian and French civilian resisters; but the lurid accounts of rapes and baby-killings put forward by the British had no foundation. Nothing in Germany's conduct matched the British hunger blockade—or, for that matter, Belgian treatment of their Congolese subjects—in horrendousness.[2]

Wilson, then, carried away by his own rhetorical effusions, succeeded in involving the United States in war. To what end? As his Republican critics such as Theodore Roosevelt and Henry Cabot Lodge noted, Wilson had done next to nothing to prepare a military force capable of intervention in Europe. Fleming goes so far as to claim that Wilson believed the war could be won without the dispatch of an American expeditionary army to Europe. Here I think our author's intriguing speculation needs more evidence; but of the fact of American unpreparedness, there can be no question.

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[2]Fleming is fully familiar with recent work on German military conduct in Belgium. He cites the important book of John Horne and Alan Kramer, *German Atrocities, 1914: A History of Denial*, Yale University Press, 2001 (p. 494, n. 19).

The American forces, when they finally arrived in Europe, had to "learn by doing," and the untrained Americans sustained massive casualties as soon as they engaged in battle. Although the American commander, John J. Pershing, preserved for the most part the Americans' status as an independent military force; he fell in entirely with the fighting methods of the European armies. These involved frontal assaults on heavily fortified positions; efforts, usually unsuccessful, to gain a few hundred feet of ground cost thousands and thousands of lives.

Our author is by no means an uncritical apologist for the German Kaiser and his military machine.

True enough, the Americans and their European allies finally achieved "victory," but at what cost? "The Americans had been in combat two hundred days. . . . In that time, 50,300 doughboys were killed. Another 198,059 Americans were wounded in action. Another 62,668 died of disease. . . . In 1930, the Veterans Bureau estimated that war-related diseases, wounds and other kinds of trauma

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inflicted on the Western Front had raised the total cost to 460,000 deaths" (p. 307).

Americans who remained at home also suffered from the war, especially if they had the effrontery to criticize Wilson's policies. Wilson in his April 1917 speech declared that "the world must be made safe for democracy," but evidently America was to be withdrawn from the sphere of freedom for the duration of the war. Protesters often faced long prison terms and were in some cases lynched. Discontent with the war among American blacks led to race riots. "Throughout the uproar [in East St. Louis] Woodrow Wilson said nothing. When prominent African Americans journeyed to Washington to complain in person, he refused to see them" (p. 110).

To what end did all these Americans sacrifice their lives, health, and liberty?

Once more our question recurs: to what end did all these Americans sacrifice their lives, health, and liberty? According to Wilson, a treaty of peace would establish a new world order. Self-determination and democracy would prevail, and the League of Nations would put an end to war. Was not this beautiful ideal worth hundreds of thousands of deaths and a few lynchings?

Once again, Wilson followed his characteristic pattern of announcing goals in flowery language that bore no relation to reality. The peace treaty imposed harsh terms on Germany, despite the fact that Germany agreed to an armistice on the basis of Wilson's Fourteen Points.[3] "Along with the confession of guilt for the war were reparations that would be decided later—which meant Germany's economy would be at the mercy of the victors for as long as they pleased. Added to this were the loss of crucial coalfields to the Poles and French; the separation of the Rhineland, the Saar, and Upper Silesia from the Reich; the loss of the port city of Danzig" (p. 378).

So much for self-determination. The peace settlement actually represented a massive victory for empire building. In a discussion between British and Italian diplomats about League of Nations mandates, "one of them read aloud the lines that an 'A' mandate required 'the consent and wishes of the people concerned.' Nicholson [sic] was struck by how heartily everyone laughed. [Italian] Premier Orlando's eyes were filled 'with tears of mirth'" (p. 364).

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[3]The extent to which exceptions to the Fourteen Points were contemplated in the armistice is much disputed, but it is unquestionable that Germany did not surrender unconditionally.

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As readers will by now expect, Wilson responded to the collapse of what he had promised with rhetorical moonshine. In response to protesting remarks by Frank Walsh, a onetime supporter, Wilson explained the betrayal of self-determination in this way: "You have touched on the great metaphysical tragedy of today" (p. 371). What pretentious nonsense!

Wilson insisted that the peace treaty incorporate his pet project, the League of Nations. All else might be given up, if he was granted his League; and he was willing to see the entire Treaty of Versailles scuttled by the Senate rather than allow any "reservations" to modify his pet project. But exactly how the League was supposed to guarantee peace he never bothered to explain.

In essence, Wilson's solution to all problems was simple—the world must always have Woodrow Wilson to lead it. Thus, although felled by a crippling stroke that for a considerable time left him unable to function, he wanted the Democrats to renominate him for president in 1920. Colonel House in his novel *Philip Dru, Administrator*, portrayed a "military and political genius" who led a nation "into an era of almost superhuman contentment by persuading the people to make him their supreme autocrat" (p. 9). Wilson no doubt thought of himself in such vainglorious terms, but he was no more than a glib purveyor of words without substance. As Fleming ably shows, he brought disaster to his country and the world.

Fleming demonstrates an impressive command of the vast literature on World War I. I noted a few mistakes. The Chief Justice in 1917 was Edward Douglass White, not Andrew White (p. 18). William Gladstone's middle name was "Ewart," not "Evarts" (p. 21). The author wrongly promotes Hugo Munsterberg to the nobility (p. 62). The IWW was the "Industrial Workers of the World," not "International Workers" (Fleming gets this right on p. 344, but not elsewhere). Kaiser Wilhelm II was Wilhelm I's grandson, not his son. Harold Nicolson's last name is misspelled (p. 364).[4] ■ **MR**

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[4]By the way, "the red-bearded Paul Mantoux" (p. 333), who translated into English Raymond Poincaré's speech at the opening of the Paris Peace Conference, later offered Ludwig von Mises a chair at the Graduate Institute of International Studies in Geneva.

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Is Inequality Indefensible?

Libertarianism Without Inequality

MICHAEL OTSUKA
OXFORD UNIVERSITY PRESS, 2003
VIII + 158 PGS.

Michael Otsuka endeavors to combine two fundamental principles of political philosophy, usually considered polar opposites. In my view, his ingenious attempt does not succeed; but his failure has much to teach us.

Otsuka has been struck by the force of the self-ownership axiom. Is it not obvious, once one thinks about it, that each person owns himself, in the sense that he has the right of disposition over his body and labor? The fact that you need a kidney in order to survive should not give you a legally enforceable right to take one of mine, even though I can get by with only one.

The example just given hardly seems controversial, but does it not have radical implications for the contemporary welfare state? If you have to pay taxes to support the poor and disabled, then your right of self-ownership has been violated. As Robert Nozick, following Herbert Spencer, pointed out, taxation to help the unfortunate is a species of forced labor. Slavery remains slavery even if the slave owners are physically disabled. If, then, you acknowledge self-ownership, do you not also have to reject the welfare state and embrace libertarianism?

Otsuka has a surprising response. He thinks that he can be a libertarian without rejecting transfers of wealth to the poor and disabled. His "left libertarianism," as he terms it, combines robust rights of self-ownership with what amounts in effect to compulsory welfare transfers.

Otsuka thinks that he can be a libertarian without rejecting transfers of wealth to the poor and disabled.

Before we examine Otsuka's attempt to "square the circle," a preliminary question confronts us. Why does Otsuka wish to promote this seemingly odd amalgam? Though he finds the case for self-ownership compelling, he is also attracted to another line of thought. People have vastly different abilities, temperaments, and assets; as a result, in a free-market society some are able to achieve much higher levels of welfare than others.

But is not this grossly unfair? You do not morally deserve your abilities. It

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is a mere matter of luck, e.g., that someone is born blind and is as a result probably greatly restricted in the level of happiness he can attain, relative to sighted people. People ought to enjoy equal opportunities for welfare, regardless of their natural starting points: society has a duty to "correct for luck."[1]

I must underscore the radicalism of Otsuka's position. He holds not only that the poor should be helped in some fashion, but that no one is entitled to a greater opportunity for welfare than, say, a blind quadriplegic with a morose disposition. Sufficient property must be transferred to this unfortunate so that he is, so far as we can make it, equally happy with those more fortunately endowed.

But how can this idea possibly be combined with self-ownership, so long as a single person who is not disabled refuses to labor on behalf of the unfortunate? Otsuka finds the key to the mystery by developing a line of thought advanced by G.A. Cohen, by whom he has been greatly influenced. Like our author, Cohen felt the force of the self-ownership principle; but he denied that self-ownership entails standard libertarianism.

Libertarians assume that people, because they are self-owners, can acquire unowned property by "mixing their labor" with it; but does not this claim involve additional assumptions? Who says that property is initially unowned? Even if it is, can people acquire unlimited amounts of property without restriction?

Though Cohen located a gap between self-ownership and libertarian property rights, he did not defend a combination of self-ownership with egalitarianism. Quite the contrary, he maintained that egalitarianism, consistently applied, would

[1]The arguments that Otsuka here relies on have been subjected to withering assault in S.L. Hurley, *Justice, Luck, and Knowledge* (Harvard University Press, 2003). See my review in *The Mises Review*, Summer 2003.

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stultify self-ownership. It is here that Otsuka takes issue with his mentor.

Otsuka wisely accepts the evident fact that property starts out unowned; his egalitarian move arrives with his answer to the second question. Robert Nozick famously held that initial acquisition of property is subject to a proviso: "You may acquire previously unowned land (and its fruits) if and only if you make nobody else worse off than she would have been in a state of nature in which no land is privately held" (p. 23).

If Otsuka is right, he has achieved what appeared impossible: he has shown that full self-ownership is compatible with radical egalitarianism.

This proviso, Otsuka rightly holds, is very easy to fulfill, since almost everyone is better off under a system of private property than under a regime of common ownership. But what if one makes the proviso more exigent in its requirements? He proposes that property can be justly acquired only if everyone in society, most definitely including the disabled, winds up with an equal opportunity for welfare.

If Otsuka is right, he has achieved what appeared impossible: he has shown that full self-ownership is compatible with radical egalitarianism. If someone protests that it is entirely up to him, as a self-owner, whether he wishes to donate the fruits of his labor to the disabled, and that he chooses not to do so, Otsuka stands ready with his left libertarian reply.

"Your labor is your own," he will acknowledge. "But so much property must be transferred to the poor and disabled that if you want to acquire anything more than bare subsistence for yourself, you will have to labor for these unfortunates. Since they initially hold most of the property, beyond what is required for bare subsistence, you must work for them if you want property of your own. What could be more voluntary?"

It transpires that even if you pay the appropriate ransom to the disabled in order to obtain property, you still cannot bequeath your property to your heirs. To do so would be impermissibly to violate the equal chance at welfare of members of future generations. And you cannot even pass on the improvements your own labor adds to the property you acquire: "Since individuals possess only a lifetime leasehold on worldly resources, they have nothing more than a lifetime leasehold on whatever worldly resources they improve" (p. 38).

But those who do not share Otsuka's commitment to absolute equality will think that his system leaves room for only an etiolated version of self-ownership. Imagine a social

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system in which everyone owns himself, but I hold a legal monopoly of all property beyond what people require to eke out a living. Would not I be in a position approaching absolute command? We would hardly have here a free society; and I do not think the matter much altered if it turned out that I was the only disabled person in the society.

Otsuka's reconciliation almost totally eviscerates the worth of self-ownership for those not so fortunate as to be poor in natural assets or disabled. We may grant his project a Pickwickian "success"; but why should we adopt it, rather than standard libertarianism?

You cannot acquire vast amounts of property just by your say-so.

Oddly enough, Otsuka deploys against standard libertarianism an example similar to the one that I have advanced against his own approach. Does not Nozick's proviso allow a single person to control all the property in a society? He may do so provided everyone else is slightly better off than he would have been in a society without any private property. "Nozick's version of the Lockean proviso is too weak, since it allows a single individual in a state of nature to engage in an enriching acquisition of all the land there is if she compensates all others by hiring them and paying them a wage that ensures they end up no worse off than they would have been if they had continued to live the meager hand-to-mouth existence of hunters and gatherers on non-private land" (p. 23; Otsuka credits this counterexample to Cohen).

This objection rests on a complete misunderstanding of how libertarians believe that property is initially acquired. Like Cohen before him, Otsuka reduces the libertarian principle of initial acquisition to the proviso. In point of fact, the proviso is only a modification (in the Rothbardian view an unnecessary one) to the principle. You cannot acquire vast amounts of property just by your say-so, if you follow the principle; you must combine your labor in the appropriate way with unowned land in order to acquire it. If this is taken into account, it seems next-to-impossible that the nightmare Otsuka has conjured up could in practice arise.

Otsuka eliminates the limits on property acquisition contained in the libertarian principle; and, having done so, triumphantly proclaims that libertarians recognize practically no limits to property acquisition. Otsuka's mistake is readily apparent if one returns to his version of the so-called Nozickian proviso, quoted above. He makes it a *sufficient* condition for acquiring unowned property that you leave no

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one worse off, but he offers no evidence that Nozick or any other prominent libertarian holds this bizarre position. Otsuka has his own version of a Lockean principle, in which the "mere staking of a claim" suffices for acquisition, subject to the proviso he deems correct; but he has no right to attribute a similar view to his libertarian opponents.

Thus, even if Otsuka is right that Nozick's proviso does not eliminate the bad outcome Cohen has imagined, the point has little significance. Since the proviso is only part of the principle of property acquisition, why does it matter if it taken by itself leads to bad results?

But let us put this to one side. Suppose that Otsuka and Cohen were correct that Nozick's proviso forms the sum and substance of his principle of property acquisition. It leads to the bad result the critics have called to our attention: under it, someone could obtain all the property in society and maintain everyone else in perpetual penury.

What follows? Presumably, the proviso should be modified so that it no longer leads to this dire consequence. It hardly follows that it should be replaced by Otsuka's egalitarian acquisition principle.

An analogy will clarify what is at issue. A famous philosophical example, first I think devised by Hastings Rashdall, asks us to consider someone dying of thirst in the desert. Someone who owns the only available water in the vicinity offers him a cupful, if he agrees to surrender all his assets in return. It seems apparent that the bargain is unfair; the owner of the water is wrongfully taking advantage of the situation in which his customer finds himself. (I do not of course say that this transaction should be legally prohibited.) It does not follow, because of the unfairness of this bargain, that no one making an exchange should be able to get substantially more than the market price for what he offers. To think so is to commit exactly the same error as Otsuka. In both cases, there is a jump from one example to an overly broad conclusion.

I am always grateful to an author who illustrates exactly the fallacy I am trying to pin on him.

I am always grateful to an author who illustrates exactly the fallacy I am trying to pin on him. Otsuka argues, in parallel fashion to what has already been presented, that a Lockean principle of acquisition permits one generation politically to enslave its successors. If so, the principle must be modified; but once again, Otsuka makes his characteristic jump. "I have argued that this inegalitarianism in Locke [i.e., the situation in which a generation enslaves its successors] is

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indefensible. It is inconsistent with a proper understanding of the conditions under which individuals may justifiably come to own previously unowned worldly resources. Contrary to Locke's own understanding of these conditions, they call for an egalitarian pattern of ownership of land . . . among the members of each generation" (p. 98).

Basing himself on a misunderstanding of standard libertarian views, Otsuka frightens us with a vision of a single person or small group who dominates society by owning all the land that it contains. Against this menace, he proposes to subject everyone to a dictatorship of the poor and disabled, by giving them control of virtually all property. Such is left libertarianism. ■ **MR**

Against Preemptive Strike

Defend America First: The Antiwar Editorials of the Saturday Evening Post, *1939–1942*

GARET GARRETT
INTRODUCTION BY BRUCE RAMSEY
CAXTON PRESS, 2003; 285 PGS.

During the 1920s and 30s, a majority of Americans came to believe that our involvement in World War I had been a horrendous mistake. The war was supposed to make the world safe for democracy, but instead fascism, communism, and aggressive nationalism were the order of the day in Europe. In an effort to forestall future involvements in European conflagrations, Congress enacted stringent neutrality legislation.

Toward the end of the 1930s, a crucial question confronted Americans. Did the growing power of the Nazi regime require Americans to alter their newfound commitment to neutrality? The question could not be avoided once Britain and France decided in 1939 to resist Hitler's endeavors to revise the Versailles and Locarno treaties in Germany's favor. War in Europe began on September 3, 1939, when Hitler refused British and French ultimatums that he end his invasion of Poland.

Fascism, communism, and aggressive nationalism were the order of the day in Europe.

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Garet Garrett, an outstanding critic of Roosevelt's New Deal, brilliantly argued in favor of continued American neutrality. Garrett, during the decisive years 1940 and 1941, was the chief editorial writer for the *Saturday Evening Post*, then one of the most popular American magazines; and Bruce Ramsey has very usefully gathered together a selection of Garrett's articles from this and a slightly earlier period.

Garrett's decisive move was to deny that an adequate response to Hitler required military aid to the Allies.

One way to defend American neutrality was to argue that Hitler posed no danger to the United States. Garrett decisively rejected this line of thought. As he saw matters, the Nazi regime had built up a military machine of unparalleled power. This might very well pose severe problems for America. In an editorial of July 6, 1940, Garrett said: "A new and frightful power has appeared, an offensive power moved by an unappeasable earth hunger, conscious of no right but the right of might. It does not threaten this country with invasion: at least, not yet. It does threaten the Western Hemisphere by economic and political designs in the Latin American countries, and this is, for us, an ominous fact. But the larger aspect of what has happened is that the world is in a state of unbalance" (p. 51).

If this is Garrett's view, does he not at once confront a difficulty? If Germany was moved by "unappeasable earth hunger," should not the United States act to contain this malign power? If so, should not neutrality be abandoned? Whatever the failings of Britain and the nations allied with her, was it not in the interest of the United States to provide the anti-Hitler forces with all possible aid?

Garrett's decisive move was to deny that an adequate response to Hitler required military aid to the Allies. Quite the contrary, America should make its borders impregnable to attack: "In the whole world . . . there is one people able to create a defensive power equal to the new power of frightful aggression that has destroyed the basis of international peace and civility. We are that people . . . we are the most nearly self-contained nation of modern times, an empire entire, possessing of our own in plenty practically every essential thing. . . . Our productive power is equal to that of all Europe, and may be increased, so far as we know, without limit. . . . Finally, as we lie between two oceans, our geographical advantages in the military sense are such as to give us great natural odds against any aggressor" (pp. 58–59).

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Defenders of American intervention in the war might answer Garrett in this way: "Maybe America can do as you say. But why should we retreat to a Fortress America? If, as you concede, Germany menaces us, why should we not aid those already struggling against the Third Reich and its *Führer*?"

Garrett fully anticipated this objection, and in his response he showed himself a better economist than his critics. If America sent arms to other countries, would this not weaken our own forces? Interventionists thought only of the benefits that aid would help secure, but they ignored the fact that stripping America of its arms weakened us, all the more so as America had not yet built up secure defenses. In sum, Garrett, unlike his critics, was fully alive to the concept of opportunity cost. "If it should turn out that to strip this country of armaments and send them to Europe at a moment when our existing power of defense was pitifully inadequate . . . had been a tragic blunder . . . then the leader who had done it might wish that his page in the book of fame might refuse to receive ink, for it would be written of him that in his passionate zeal to save civilization in Europe he had forgotten his own country" (p. 56).[1]

Garrett, unlike his critics, was fully alive to the concept of opportunity cost.

Garrett supplemented his argument with a further point. Did not interventionists realize that if they armed one side in a war, the enemy would deem this a hostile act? Roosevelt, beginning with his notorious Chicago Bridge speech of October 1937, had spoken of the need to "quarantine" aggressors. But how could this be done "short of war," as the interventionists promised? Garrett accused his interventionist opponents of seeking a victory on the cheap over the Axis powers. Others would do the fighting, while America would secure without bloodshed the end of the German threat.

For Garrett, this course of action was foolhardy and cowardly as well. In June 1940 the Navy arranged for France to buy American bombers, a sale that Garrett claimed had put us into the war. "Suppose we were at war and a government that had been neutral in form, but not in feeling, suddenly opened its arsenals to our enemy, exactly as we have opened ours to the

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[1]The importance of this theme for noninterventionists has been stressed by Justus Doenecke, *Storm on the Horizon* (Rowman and Littlefield, 2000). See my review in *The Mises Review*, Summer 2000.

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Allies. Would we regard it as an act of war? We would" (pp. 55–56).

Not only did Roosevelt's unneutral conduct risk reprisal from Germany, but it also displayed a lack of moral fiber. If the Germans were really our enemies, we should take up the battle ourselves rather than rely on others to give their lives on our behalf.

Interventionists rarely sought directly to counter Garrett's powerful dialectic, but a Roosevelt supporter rash enough to do so might have replied to him in this way: "Your case is too exclusively strategic. Even if you are right, what about the moral dimension of the war? Do we not have a duty to fight against evil, even if it has not yet reached America?"

Our imagined objector is quite wrong; Garrett did not ignore the moral dimension. For him, the preservation of America as an independent civilization was a categorical imperative. A worldwide crusade against evil could not succeed and put in peril our unique contribution to the world: "They are defeatists who develop the beautiful thought that if America will now put her strength forth in the world, instead of keeping it selfishly to herself, the principle of evil can be chained down. . . . Suppose we had reconquered Europe for democracy, and the principle of evil were chained down. What should we do about the peace? Leave it to Europe? We did that once [without success]. . . . Should we stay there to police it? Or should we come home and stand ready to go back to mind or mend it when something went wrong?" (pp. 138–39). It is apparent that Garrett had learned the lessons of Woodrow Wilson's futile crusade.

The essentials of Garrett's case remained constant from the onset of war in Europe until Pearl Harbor; but as Roosevelt proceeded relentlessly on the path to war, another issue emerged. Garrett and his fellow noninterventionists had ably stated their case, and their opponents were not slow to follow with their point of view. Who should now decide what course of action America should follow?

For Garrett the answer was obvious: the American people, through their representatives in Congress. Unfortunately, Franklin Roosevelt had entirely other ideas. He gradually maneuvered America into the war, all the while professing his peaceful intentions. Congress for him was but a minor obstacle, to be evaded or ignored if it refused to obey his bidding.

Roosevelt's policy of executive dictatorship continued and extended his conduct into domestic affairs. Garrett, who had long been one of the president's fiercest critics on this score, stressed a devastating admission by Roosevelt: "As he was receiving into his hand from an obedient Congress the new instrumentalities of power [in 1936], Mr. Roosevelt himself remarkably said: 'In the hands of a people's government this power is wholesome and proper;' in bad hands, he added, it 'would provide shackles for the liberties of people'" (p. 101).

But could not the American people, if they wished to do so, repudiate Roosevelt and all his works? Had the

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Republicans in 1940 nominated for President a resolute noninterventionist, such as Senator Robert Taft, the choice of peace or war would have been up to the voters. But they did not do so, instead choosing under mysterious circumstances Wendell Willkie. He favored, like Roosevelt, a policy of unneutral aid to the allies; voters who saw through the "aid short of war" deception could do nothing.

Garrett puts the essence of the matter this way, in his inimitable style: "when you consider what must be involved in the decision [on whether America should defend Britain and her allies], who will have to fight and die for it, whose country it is, you might think that with all the facts submitted, it could be left to the people. Was it? Did they vote on it?" (p. 123).

Incidentally, Garrett's point undermines his surprising defense of conscription. Although Garrett fully grasped that conscription was a step toward totalitarianism, he thought it was needed to build up America's defenses. Did not the extraordinary nature of the European situation require drastic action?

Perhaps it did; but why could not Americans of military age decide the matter for themselves by volunteering? Garrett relied on a peculiar argument of Woodrow Wilson's that the volunteer system was "unscientific." As near as I can make out, the contention is that a draft allows men to be deployed efficiently, as the central command wishes. With volunteers, the armed forces must rely piecemeal on those who happen to appear at recruitment stations. But this argument ignores the fact that volunteers can register for future call up, in the same fashion as draftees.

In the context of his magnificent defense of liberty, Garrett's lapse is a minor failing. Garrett noted that once Roosevelt won reelection, he could drop the mask. Although he had promised during the election to keep us out of "foreign wars," Roosevelt three months later said that America would never accept a peace dictated by aggressors. Garrett commented: "'We' were the people, suddenly staring at the fact that we had assumed ultimate and unlimited liability—moral, physical, and financial—for the outcome of war on three continents, for the survival of the British Empire, and for the utter destruction of Hitler" (p. 161). If the American people did not accept this broad and ambitious mandate, what did this matter? Roosevelt, like Woodrow Wilson before him, viewed himself as the indispensable man who would guide Americans as he saw fit. ■ MR

Voters who saw through the "aid short of war" deception could do nothing.

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Do Future Generations Have Rights?

A Poverty of Reason: Sustainable Development and Economic Growth.[1]

WILFRED BECKERMAN
THE INDEPENDENT INSTITUTE, 2002
XIII + 94 PGS.

Wilfred Beckerman is an outstanding economist of a type probably more common in Britain than America. Like Anthony de Jasay, Amartya Sen, and I.M.D. Little, Beckerman is thoroughly at home in philosophy; and in *A Poverty of Reason*, he makes insightful remarks about the rights of future generations, equality, and the so-called "precautionary principle."

Some environmentalists are outright enemies of humanity, who favor a drastic reduction in human population, if not the elimination altogether of our species. Once at a conference, I was seated at dinner next to that eminent Luddite, Kirkpatrick Sale. I mentioned that a critic had accused him of wishing to return to the Stone Age. To my surprise, he said that this was just what he wanted.

More moderate environmentalists do not propose to crawl on all fours, and Beckerman here analyzes the views of those who seek the seemingly reasonable goal of "sustainable development." They do not propose to do away with economic growth altogether; but must not the rights of future generations be guaranteed? We must leave to them an environment at least as good as that which we have enjoyed. In particular, we must make sure that vital resources remain available, act to contain global warming, and endeavor to prevent "biodiversity" from unacceptable reduction.

Some environmentalists are outright enemies of humanity, who favor a drastic reduction in human population.

But will not the free market take care of all such issues? Owners of private property have every incentive to conserve their resources rather than squander them for immediate gain. Further, most people wish to provide

[1]I cite the title as it is given on the cover. The title page omits "and Economic Growth."

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for their children; insuring the welfare of future generations requires no collective action beyond this.

For proponents of sustainable development, the free market is not enough. People will indeed endeavor to conserve what they own; but they will do so guided by an economic principle. For actors on the market, maximizing expected utility is the be-all and end-all.

It does not follow that these future generations have an enforceable right that resources be conserved at a certain rate.

Is this not unfair to future generations? People will make provision for their children and grandchildren but will rarely seek to conserve their resources beyond what is needed to do this. So long as people can leave something to their heirs, the pursuit of profit will impel them to wasteful use of scarce resources. Must not the government protect the rights of future generations, in order to prevent this catastrophe?

Beckerman identifies a fundamental failing in this line of thought. Let us grant that the present generation ought not to squander all its resources and leave nothing for distant future generations. It does not follow that these future generations have an enforceable right that resources be conserved at a certain rate. To introduce here the language of rights, our author maintains, is to assume without basis that whatever moral claims future generations have on the present bind us absolutely, or close to it. Why not instead view obligations to the future as one item to be weighed against other things?

Our author goes further. He maintains that ascribing rights to those who do not yet exist makes no sense. "More generally it is difficult to see how future generations can be said to have *any* rights because properties, such as being green or wealthy or having rights, can be predicated only on some subject that exists. . . . If I were to say 'X has a fantastic collection of CDs,' and you were to ask me who is X, and I were to reply, 'Well actually, there isn't any X,' you would think I had taken leave of my senses. And you would be right . . . unborn people cannot *have* anything. They cannot have two legs or long hair or a taste for Mozart" (pp. 67–68).[2]

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[2]But past people do not now exist, but you can violate the rights of someone now dead. Suppose, e.g., that you dispose of someone's estate contrary to the directions of his will: have you not violated his rights? Beckerman seems to me on the correct lines, but his argument needs more careful statement than he gives it here.

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One might object, "Is not Beckerman simply playing with words? Let us grant him his point: might we still not have a binding moral obligation to preserve a sustainable environment for future generations? Where has his semantic wordplay gotten him?"

We can, as the objection supposes, speak of binding moral obligations without reference to rights, but Beckerman's point nevertheless helps us grasp an essential issue. The language of rights at once takes us into the realm of absolute claims; and if we grasp that we need not—or cannot, if Beckerman is right—ascribe rights to future generations, we can begin to think clearly about our obligations to them. Beckerman has freed us from the prison of a false assumption.

Beckerman's point about rights can be used, in a way that he does not consider, to strengthen his case against sustainability advocates. Future persons may not have rights, but presently existing people do have them. If so, then efforts by even moderate environmentalists to restrict property rights may be illegitimate on their face. Beckerman very effectively demonstrates that environmentalist arguments fail on their own terms. But even if these arguments were cogent, this would not suffice to justify compelling property owners to restrict their consumption. The issue of rights would first have to be addressed.

Beckerman has exposed a hidden assumption that lies behind the environmentalist case, but this is not his greatest contribution. He challenges head-on a key premise of much contemporary moral philosophy. The sustainability advocates maintain that each future generation should be provided with an equally good environment to the one we now have. With great daring, Beckerman asks, what is so good about equality?

Arguments for equality often hide behind feelings of sympathy many people have for the impoverished. Environmentalists paint a bleak picture of a future in which essential fuels are exhausted and people confront catastrophically high temperatures. Is it not unfair, they inquire, to subject people to such conditions?

If it is unfair, what is wrong is that people should not be subjected to bad conditions: equality has nothing to do with the case. Harry Frankfurt has brilliantly elucidated the essential point: "The egalitarian condemnation of inequality as inherently bad loses much of its force . . . when we recognize that those who are doing worse than others may nevertheless be doing rather well . . . what is of genuine moral concern is whether people have

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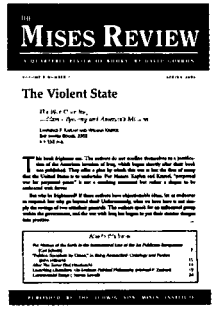

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good lives, and not how their lives compare with the lives of others" (pp. 72–73).

Beckerman applies this fundamental insight to sustainability, with devastating results. So long as those in future generations are expected to prosper, why does it matter morally if their environment is not in all respects equally good with our own?

If we nevertheless insist on equality, matters take a surprising turn. Those who will live in the future are likely to benefit from continued economic growth. If they turn out to be more prosperous than we, do they not, by the criterion of equality, owe us recompense for their superior good fortune? Of course, they cannot pay us, since they do not now exist. But we can do our best to achieve equality by refusing to conserve our resources. The poorer environment that results for our successors balances their superior prosperity and thus helps to achieve equality.

Beckerman states the *reductio* in this way: "But suppose future generations were expected to be richer than we are for reasons that are outside our control. . . . But if we regard natural inequalities as unjust, we would be morally obliged to take some action . . . to reduce our poverty compared with future generations by, say, slowing down future growth (e.g., by investing less or using up more of the earth's supposedly scarce resources)" (p. 71).

Beckerman's argument reduces to ruins the case for sustainable development, since this is based precisely on the claim that future generations are entitled to an equally good environment to our own. But what if environmentalists, chastened by Beckerman's attack, withdraw to less demanding claims? Even if future generations are not entitled to an equal environment, is it not common sense to conserve scarce fuels and counteract global warming?

Our author addresses these issues in detail, but I should like instead to look at another fundamental point he raises that applies more generally. Many environmentalists show themselves well aware of the fact that their predictions of disaster are controversial. But they claim to have an argument that their pessimistic views should prevail. If the optimists are in the right, and we follow their advice, we shall have somewhat higher growth rates than otherwise. But if the environmentalists are right, and we ignore them, disaster

Environmentalists claim to have an argument that their pessimistic views should prevail.

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threatens. Should we not then err on their side?

This is the so-called precautionary principle: "Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation" (p. 41, quoting a Ministerial Declaration of the UN Economic Conference for Europe).

To think that possible environmental disaster requires immediate response is falsely to assume that we risk disaster by waiting for a short time before acting.

To pose the issue this way, Beckerman shows, rests on a false assumption. Why must the decision be made immediately? If "scientific certainty" is not available, why not wait until we have a clearer idea of what will happen? Why now install costly measures designed to curb global warming, if in a few years we may find out that our efforts are futile or that global warming is not so bad?

To think that possible environmental disaster requires immediate response is falsely to assume that we risk disaster by waiting for a short time before acting. But this does not follow, even if the environmentalists turn out to be right in their predictions. So far as climate change is concerned, "delaying action by several years makes a negligible difference" (p. 47).

But what happens if we allow for this point? Suppose, e.g., that after several further years of research, we still face conflicting views about global warming. Should we then follow the pessimists, lest catastrophe follow?

Not necessarily. Beckerman points out that the principle of avoiding disaster can be carried too far. We should indeed be cautious, but the benefits of economic development should never be ignored. The precautionary principle "is just a pompous way of saying that one should consider the case for making some investments now in order to minimize the danger of some unpleasant event taking place later. But nobody in their senses would make investments to avoid *every* remote possibility since that would leave precious little time for the enjoyment of life" (pp. 44–45).

I have stressed in this review general principles rather than the particular details of Beckerman's analysis of fuels, climate change, and biodiversity. I am happy to assure readers that he finds little cause for alarm in any of these areas. ■ **MR**

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Law on Shifting Sand

Desperately Seeking Certainty: The Misguided Quest for Constitutional Foundations

DANIEL A. FARBER AND
SUZANNA SHERRY
UNIVERSITY OF CHICAGO PRESS, 2002
XI + 208 PGS.

This is a pernicious book. It comes to us in false pretenses. Farber and Sherry profess themselves opponents of "grand theorists" in constitutional law. These theorists endeavor to found American constitutional law on "one very simple principle," in John Stuart Mill's phrase. Each of the six theorists our authors discuss has a different idea of the nature of that simple principle. Some, including Robert Bork, Antonin Scalia, and Richard Epstein, are conservatives or libertarians; the others, Akhil Amar, Bruce Ackerman, and Ronald Dworkin, are liberals or populists. "Viewing themselves as Luther-like reformers, they seek to remake a corrupted church from the foundations upward. Like Luther, each claims that a pure vision of the Constitution requires a far-reaching reconceptualization of existing institutions" (p. 4).

Farber and Sherry reject the whole foundationalist enterprise of these writers. Instead, constitutional interpretation should be pragmatic, taking into account a wide range of factors that cannot be fully set forward in a deductive system. In accord with their own method, they do not offer a "knockdown" deductive argument against grand theory. Instead, they offer detailed responses to each of the six writers.

This is a pernicious book. It comes to us in false pretenses.

On the surface, Farber and Sherry's project sounds promising. Many readers will find in it echoes of F.A. Hayek's powerful campaign against "constructivist rationalism" and his preference for the common law over legislation. (Our authors make no reference to Hayek.) Furthermore, their particular criticisms of the theorists, though sometimes mistaken, are often insightful.

Why, then, do I call their book pernicious? For this reason: their defense

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of common sense and pragmatism is not what it seems. They exalt into an unchallengeable absolute the current jurisprudence of the Supreme Court. You can disagree with particular decisions of the Court: the authors themselves deplore the Court's interference in the 2000 presidential election. But if you substantially challenge the whole body of Supreme Court case law, you

Bork does not deny that there is a "middle ground." He thinks that judges should not occupy it.

are a nasty "foundationalist" and opponent of the common law. Here precisely is the pernicious element of the book: by stipulative definition, the authors equate radical and arbitrary decisions of the Supreme Court with common law decision-making.

One claim in particular arouses our authors to fury. If a theorist maintains that the Constitution has a discernible original meaning that the Supreme Court has distorted, Farber and Sherry at once begin to fibrillate.

Robert Bork maintains exactly this thesis, and they must at all costs refute him. Bork claims that Supreme Court justices often decide cases according to their political or ethical views, instead of the plain meaning of the Constitution. Where does the Constitution say anything about abortion or, more generally, institute a "right of privacy"? The fact that the Constitution is silent on these matters has not impeded the Court in such cases as *Roe v. Wade* from imposing its own legislative agenda.

Farber and Sherry claim that Bork's portrayal of his opponents is false. Defenders of originalism "fall prey to the fallacy that there is no middle ground between blind adherence to originalism and purely political decision-making. . . . But judges do find middle ground, negotiating the treacherous territory between fanatical obedience to the dead hand of the past and unconstrained discretion to implement their own political will" (p. 14).

It is not Bork but his critics who here fall into fallacy. The originalist claim is that judges ought to be bound by the meaning of the Constitution it is their mandate to interpret: they ought not to engage in "creative" jurisprudence. But it does not follow from the originalist claim that these judges lack any rationale for their decisions. Just the point of the criticism is that they should not concoct their own formulas for interpretation, in which original intent figures as but one of several grounds for judgment. Bork does not deny that there is a "middle ground": he thinks that judges should not occupy it.

But, Farber and Sherry say, the quest for original meaning is futile. Are

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there not frequent disputes about the original meaning of various sections of the Constitution? How then can someone claim that there is an objectively determinable meaning to the text? "After thorough and careful research, scholars disagree on the original meaning of practically every important constitutional provision. Did those who adopted the Establishment Clause of the First Amendment . . . mean to bar *all* government aid to religion, or only government preference for particular religions. . . . How much protection did the Second Amendment mean to give personal gun ownership. . . . The historical record is not indeterminate, but it rarely points unambiguously to a single answer to questions as complex as these" (pp. 14–15).

The problems of originalism, our authors aver, are even more far-reaching. We are supposed to follow the original meaning of the text, but "how do we define 'the framers of the Constitution' whose understanding we are to consult?" (p. 15). Our authors list various possibilities, including the members of the Constitutional Convention and the delegates to the state ratifying conventions.

Must we, as a result of these considerations, abandon strict construal of the Constitution? I do not think so. True enough, the meaning of various clauses is disputed; but it hardly follows that all these interpretations are equally good. The mere fact of difference of opinion poses a problem: it does not show that the problem lacks a solution. Does the fact that many legal theorists disagree with Farber and Sherry's pragmatic style of interpretation suffice to show that this position is false? I do not think our authors will say that it does.

Further, by failing to make a basic distinction, the authors exaggerate the difficulty of discerning original meaning. Strict constructionists try to find the plain meaning of the text: they are not concerned with the private motives of the drafters or ratifiers of the Constitution.

Must we, as a result of these considerations, abandon strict construal of the Constitution?

Our authors will no doubt respond that, even taking this into account, plenty of difficult interpretative issues remain. I readily concede this, though I think the difficulties can be pared down in yet another way. Are not many differences of interpretation the product of law professors anxious to import their own agendas into the Constitution? I venture to suggest, e.g., that only someone strongly opposed to private ownership of guns could think

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that the Second Amendment's "right to keep and bear arms" leaves individuals with guns totally at the mercy of the federal government.

Once more, though, let us grant our authors that not all issues of interpretation are simple. Even if we cannot always determine the correct original meaning, do we not know enough to eliminate some purported interpretations as blatantly false? Who could possibly think that from a strict construction of the Constitution, one can derive a right to abortion?

Farber and Sherry appear to have forgotten their own strictures about indeterminacy, when they berate Bork on another issue. They make a strong argument that on originalist grounds, the Fourteenth Amendment does not bar segregated state schools. Thus, originalists should hold that the Supreme Court erred in *Brown v. Board of Education* (1954). "First, the historical evidence strongly suggests that the nineteenth-century framers intended to protect only civil or legal equality, not *social* equality. In other words, while they wanted blacks to be able to enter into contracts or to own property, they never expected blacks to become social equals with whites . . . education was part of social equality, and was thus excluded by the rights guaranteed by the Fourteenth Amendment" (p. 23).

Evidently original meaning is not always mysterious. Why have our authors here deserted to the other side? In their efforts to score a point against Bork, they have dropped their guard. To them, it is inconceivable that anyone would today oppose *Brown*. If, then, they can show that originalists should reject Chief Justice Warren's ukase, they think that they have decisively overthrown that theory of interpretation. Surely the effort to find original meaning can at most be only a part of a judge's task: has not the wisdom of Earl Warren and his successors taught us this?

They have here a good *ad hominem* point against Bork, who wants inconsistently to uphold both originalism and *Brown*. But, against their intentions, they have conceded too much to the originalist enemy; and their main argument against strict construction fails.

In their efforts to score a point against Bork, our authors have dropped their guard.

As they assail the various constitutional theorists, Farber and Sherry continue to use variants of the same odd argument they have employed against Bork. Originalism leads to rejection of *Brown*; this result is unacceptable; therefore originalism is false. Not content with their "triumph" over the

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inconsistent Bork, they generalize their argument in this way: Attempt X to take the Constitution seriously has the consequence that many of the social policies of the federal government are unconstitutional; this result is unacceptable: therefore X is false.

Justice Scalia takes seriously the provision of the Constitution that vests the power to enforce law in the executive branch. He accordingly held unconstitutional part of the Brady Act, a gun control measure: "Article II of the Constitution, according to Justice Scalia, provides that only the president (and his underlings) shall 'take care that the laws be faithfully executed.'[1] The Brady Act transferred this authority to thousands of local law enforcement officials. . . . Justice Scalia concluded that this 'unity [of the executive] would be shattered, and the power of the President subject to reduction, if Congress could act as effectively without the President as with him, by simply requiring state officials to execute its laws'" (pp. 32–33, footnote number mine).

The authors' faith in government is at times touching.

Our authors gasp in horror. If Scalia is right, then as "one commentator observed, this 'unprecedented argument' potentially 'threatens the legitimacy of many administrative agencies'" (p. 33; the commentator was Evan Caminker). We cannot have that, can we?

The authors' faith in government is at times touching. Richard Epstein has elaborated a well-known theory of "takings;" he takes a severely limited view of the conditions under which governmental seizure of property for its own use is constitutionally permissible. Readers will not be surprised to learn that Farber and Sherry respond that the government has always regulated property in a way inconsistent with Epstein's theory. But one of their remarks shows just how far they go in their uncritical adulation of government: "Even before the American Revolution, governments regulated land use, licensed peddlers and taverns, controlled prices for bread, and engaged in other economic regulations" (p. 65).

To our statist authors, then, a constitutional theory fails if it is inconsistent with governmental action in the colonial era! One wonders whether Farber and Sherry would hold that state laws repudiating debt do not violate the prohibition of "impairing the obligation of contract," on the grounds that states before the adoption of the Constitution sometimes passed such laws.

[1]Is it only according to Scalia that Article II says this?

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Sometimes, when their statist views do not preoccupy them, Farber and Sherry make useful points. I found their criticism of Akhil Amar's "intratextualist" analysis of free speech cogent. Amar maintains that interpretation of a word in the Constitution must take account of all uses of that same word in the document. The First Amendment prohibits Congress from abridging "the freedom of speech." Because "speech" also appears in the Speech and Debate Clause about congressional discussion, the First Amendment is limited to protection of political speech; commercial speech is excluded from the scope of the Amendment.

Our authors aptly remark: "it seems at least questionable to equate the protections given legislators with the protections given the general citizenry, since they serve different roles in the constitutional scheme" (p. 78).

The authors cloak their statism in common-law language; and here to my mind lies the pernicious aspect of their book. To grand theory, they oppose common-law jurisprudence: "American legal pragmatists have defended true common law reasoning, as practiced by the great judges in our legal tradition. . . . The fact is that English courts have been using this method since the Middle Ages, and the Supreme Court has been deciding cases without the benefit of a grand theory since it issued its first opinion" (p. 154).

Contrary to Farber and Sherry's misleading suggestion, the controversial decisions of the modern Supreme Court do not follow English common law practice. The court often enacts its own views into law, by "discovering" broad meanings of various provisions of the Constitution. By contrast, judges who follow traditional common law endeavor to deal with particular cases, following precedent to the greatest extent possible.

When the Supreme Court, in its decision in *Lucas* (1964), applied its concept of democracy to require states to apportion both houses of the legislature according to population, it did not use common law reasoning. Quite the contrary, it rejected traditional practices and imposed its own theory of government on the states. In *Brown*, Chief Justice Warren used the work of Gunnar Myrdal and other social scientists to overturn school segregation. Does this count as common law reasoning?

Farber and Sherry indict the "grand theorists" for distortion: they are alleged to subordinate the Constitution to their own "foundational" principles. The authors' case against these theorists seems to me often unfounded. But even if it were correct, at least these writers are trying to discover the meaning of the Constitution. And if, at times, their theories distort the Constitution, at least they are trying to produce a consistent theory.

The Supreme Court, by contrast, often enacts, in slapdash fashion, its own social views into law, with little pretence of attention to the words of the Constitution. This our authors deem common law reasoning, for reasons I cannot fathom. ■ **MR**

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